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OGC HAS REVIEWED.

14 January 1955

MEMORANDUM FOR: The Record

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SUBJECT : Dual Compensation Case of [REDACTED]

1. This supplements my memoranda of 14 and 16 December 1954 on the same subject. I talked today with Mr. Pat Friend in the General Counsel's office at GAO. Mr. Clyde Gartley, Assistant Legal Advisor to the Chief of Finance, United States Army, also was present. The general nature of [REDACTED]'s contract and services with us was explained. I pointed out that he falls in a class of individuals who are not considered by the Agency as employees but rather as independent contractors, and that any determination to the contrary would have important implications.

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2. Mr. Friend agreed that various circumstances suggest [REDACTED] does not hold an office or position within the dual compensation statute. However, he was impressed by the fact that [REDACTED] is "paid an amount calculated at the rate of \$4,800 per annum" under his contract. Mr. Friend feels this may be compensation on a time basis within the meaning of prior Comptroller General's decisions on dual compensation. Consequently, he said he was not able, on his own responsibility, to advise the Army to resume payment of [REDACTED] pension. He suggested that Mr. Houston take the question up with Mr. Lyle Fisher, General Counsel of GAO. The [REDACTED] case could be decided in the context of other similar cases of the Agency and determinations made on the general problem.

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3. Mr. Gartley stated that [REDACTED] could appeal the Army's decision that his disability was not combat incurred. The EE Division has the proper forms and will advise him to enter such an appeal. If this appeal is successful, the dual compensation question will be obviated. Mr. Gartley also stated that an individual in [REDACTED] situation has the alternative of taking disability retirement pay from the Army or of accepting similar benefits from the Veterans' Administration. These latter are not subject to the

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dual compensation statutes. The EE Division will determine what benefits would be payable by the Veterans' Administration. These are expected to be less than the pension which the Army has been paying. [REDACTED]

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[REDACTED] Mr. Gartley also indicated that if the GAO determination is unfavorable [REDACTED] the normal procedure [REDACTED] would be to demand repayment of all back dual compensation.

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[REDACTED]

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Assistant General Counsel